



May 25, 2006

TO: Transportation Authority of Marin Commissioners

FROM: Dianne Steinhauser, Executive Director

RE: State and Federal Legislation, Agenda Item 13

Dear Commissioners:

**Executive Summary:** TAM staff has developed a legislative program to guide staff in the review and comment on legislation that is being considered by the federal and state governments. This program was reviewed by the Executive Committee and is recommended to TAM for approval.

**Recommendation:** That TAM approve the Legislative Program as outlined in the staff report.

At the March 30, 2006 TAM meeting, the Commission adopted Infrastructure Investment Principles to guide staff in the review of different proposals provided by the Administration or Legislature for state bonds.

Following are recommendations for TAM's legislative program for 2006:

## **2006 FEDERAL LEGISLATIVE PROGRAM**

**Highway 101 "Marin-Sonoma Narrows" Project.** Work with regional partners, the state and the federal government to seek additional funding for the "Marin-Sonoma Narrows" Project, which would alleviate congestion on the U.S. 101 corridor in Marin and Sonoma Counties from Highway 37 in Novato to Old Redwood Highway in Petaluma. This project is the final of seven phases for the widening and improvement of U.S. 101 in Marin and Sonoma counties.

The federal "Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005" (SAFETEA-LU) authorized \$27 million for the Marin-Sonoma Narrows project, as well as an additional \$900,000 for bicycle and pedestrian improvements associated with the project, through FY 2009. Significantly more funding is necessary. Work to secure federal annual appropriations to implement this project.

## **2006 STATE LEGISLATIVE PROGRAM**

**Infrastructure Bond Acts.** Support Legislature or Administration-initiated infrastructure bond acts, such as S.B. 1266 (Perata; 2006), the "Highway Safety, traffic reduction, Air

Quality, and port Security bond Act of 2006", a \$19.925 billion transportation and infrastructure funding measure proposed for the November 7, 2006 state ballot. Monitor process and advocate for inclusion of Marin County projects where appropriate, including flood control and levee protection/rehabilitation projects.

**Authorize Local Vehicle Registration Fees.** Continue to support legislation which would authorize local governments, including Marin County, to levy an additional fee on the annual registration of motor vehicles in the county to fund the construction, improvement and maintenance of local streets and highways, as well as congestion management and pollution prevention programs. Authorization would provide self-help counties like Marin greater opportunity to compete for regional, state, and federal grants by providing additional matching funds.

In 2005, A.B. 1623 (Klehs) would have authorized a congestion management and environmental mitigation fee, raising an estimated \$1.25 million per year in Marin County. S.B. 658 (Kuehl) would have authorized a coastal environment motor vehicle mitigation program. Both were vetoed by the Governor in October, 2005. Current bills in the legislature are AB 2444 (Klehs) and SB 1611 (Simitian).

**Planning, Programming and Monitoring (PPM) funds.** Support efforts to enhance the availability, predictability and equity of PPM funds to local county transportation agencies, including the Transportation Authority of Marin (TAM). PPM funds can be used to develop planning studies and project initiation documents for new State Transportation Improvement Program (STIP) projects; for the efforts required to program projects in the STIP; and for monitoring projects once they are underway. Currently, local Measure A funds are being used by TAM for this purpose on the "San Rafael Gap Closure" project because PPM funds at \$24,000 annually are insufficient, with no funding available for supporting the "Marin/Sonoma Narrows" and future projects. A current bill in the legislature is AB 2538 (Wolk), which will increase the allowable PPM levels to 5% from the 1% of STIP County Share currently allowed.

**Highway 101 "San Rafael Gap Closure" Project.** Continue to work with state officials, the Transportation Authority of Marin, and other transportation groups to secure long-term funding commitments, or reimbursement/cost sharing of local expenses, for continuing phases of the San Rafael Gap Closure Project. The 4.5 mile-long Highway 101 widening project between Lucky Drive and North San Pedro Road will allow for a continuous carpool lane through Central Marin, as well as a north-south bicycle way through Puerto Suello Hill to improve bicycle safety. Measure A, approved by Marin County voters in 2004, is anticipated to fully fund and accelerate completion of this critical project, among other projects.

**Protect funding in the Traffic Congestion Relief Program (TCRP) and Proposition 42.** Support efforts to protect the Traffic Congestion Relief Program (TCRP), which in 2000 brought \$1.7 billion to the Bay Area for local roads and transit projects. The six-year funding program resulted from dedicating the sales tax on gasoline to transportation purposes through FY 2007-08.

While the FY 2005-06 State Budget fully funded Proposition 42, these funds in previous years were 'loaned' to the state general fund. Marin County should continue to ensure that no additional delays are imposed on the program, and that loans made from Proposition 42 funds are fully repaid with interest to local governments.

***Innovative procurement techniques such as design-build.*** Support efforts to provide additional tools for agencies to use to deliver projects to reduce costs of reduce the amount of time needed to implement projects. SB 1431 (Cox) would allow agencies to use design-build contracting, rather than design-bid-build, where they determine it would be better approach to implementing a project.

***National Environmental Protection Act (NEPA) delegation.*** Support efforts to implement NEPA delegation. SAFETEA-LU, the recent federal transportation act, established the Surface Transportation Project Delivery Pilot Program, where California is designated as one of five state that are eligible to apply to participate in a pilot program that delegates to the state the responsibilities of the Federal Highway Administration under NEPA. SB 1812 (Runner) would permit Caltrans to participate in the pilot program.

**Recommendation: That TAM approve the Legislative Program as outlined in the staff report.**

Attachments: AB 2444  
SB 1611  
AB 2538  
SB 1431  
SB 1812

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 2444**

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**Introduced by Assembly Member Klehs**

**(Coauthors: Assembly Members ~~Lieber and Nation~~ Chan, Coto,  
Evans, Hancock, Leno, Lieber, Nation, Torrico, Wolk, and Yee)**

February 23, 2006

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An act to add Chapter 2.66 (commencing with Section 65089.20) and Chapter 2.67 (commencing with Section 65089.30) to Division 1 of Title 7 of the Government Code, and to add Sections 9250.3 and 9250.4 to the Vehicle Code, relating to transportation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2444, as amended, Klehs. Congestion management and motor vehicle environmental mitigation fees.

Existing law provides for the imposition by air districts and other local agencies of fees on the registration of motor vehicles in certain areas of the state that are in addition to the basic vehicle registration fee collected by the Department of Motor Vehicles.

This bill would authorize the congestion management agencies in the 9 Bay Area counties, by a  $\frac{2}{3}$  vote of all of the members of the governing board, to impose an annual fee of up to \$5 on motor vehicles registered within those counties for a program for the management of traffic congestion. The bill would require a program with performance measures and a budget to be adopted before the fee may be imposed. The bill would require the agency to have an independent audit performed on the program and to submit a report to

the Legislature on the program by July 1, 2011. The bill would require the Department of Motor Vehicles, if requested, to collect the fee and distribute the net revenues, after deduction of specified costs, to the agency. The bill would require that the fees collected may only be used to pay for programs bearing a relationship or benefit to the owners of motor vehicles paying the fee, and would require the agency to make a specified finding of fact in that regard by a  $\frac{2}{3}$  vote.

This bill would also authorize the Bay Area Air Quality Management District, which is the air pollution control district for the 9-county Bay Area, to impose an annual fee of up to \$5 on motor vehicles registered with its jurisdiction for programs that mitigate the impacts of motor vehicles on the environment, including, but not limited to, stormwater runoff mitigation projects, water quality improvement projects, and air quality improvement projects. The bill would require a program with performance measures and a budget to be adopted by the Bay Area Air Quality Management District and the California Regional Water Quality Control Board for the San Francisco Bay Region before the fee may be imposed, and would require the fee to be adopted by a  $\frac{2}{3}$  vote of the governing board of the district. The bill would require the Department of Motor Vehicles, if requested, to collect the fee and to distribute the net revenues, after deduction of specified costs, to the Bay Area Air Quality Management District and to the California Regional Water Quality Control Board for the San Francisco Bay Region based on a specified formula. The bill would require the recipient agencies to have an independent audit performed on the program and to submit a report to the Legislature on the program by July 1, 2011. The bill would require that the fees collected may only be used to pay for programs bearing a relationship or benefit to the owners of motor vehicles paying the fee, and would require the board to make a specified finding of fact in that regard by a  $\frac{2}{3}$  vote.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 2.66 (commencing with Section
- 2 65089.20) is added to Division 1 of Title 7 of the Government
- 3 Code, to read:

1 CHAPTER 2.66. MANAGEMENT OF TRAFFIC CONGESTION IN  
2 THE BAY AREA  
3

4 65089.20. (a) As used in this chapter, “county transportation  
5 agency” means an agency designated pursuant to Section 66531  
6 to develop the county transportation plan.

7 (b) A county transportation agency may impose a fee of up to  
8 five dollars (\$5) on motor vehicles registered within the county if  
9 the board of the county transportation agency adopts a resolution  
10 providing for both the fee and a corresponding program for the  
11 management of traffic congestion as set forth in Sections  
12 65089.21 to 65089.24, inclusive. Adoption by the board requires  
13 a vote of approval by two-thirds of all the members of the board.

14 (c) A fee imposed pursuant to this section shall not become  
15 operative until six months after the effective date of this section  
16 and pursuant to the resolution adopted by the board in  
17 subdivision (b).

18 (d) A county transportation agency may adopt a resolution by  
19 a majority vote of the board to cease collection of the fee  
20 commencing on a date determined by the county transportation  
21 agency in consultation with the Department of Motor Vehicles.

22 65089.21. (a) The net revenues from the fee distributed to the  
23 county transportation agency pursuant to Section 9250.3 of the  
24 Vehicle Code shall be used for purposes of congestion  
25 management consistent with the objectives of Section 65089.

26 (b) (1) The revenues may be used to pay for programs with a  
27 relationship or benefit to the owners of motor vehicles that are  
28 paying the fee. Eligible projects include, but are not limited to,  
29 roadway operations and improvements (not including the  
30 construction of through freeway lanes), public transit capital  
31 improvements and operations, and bicycle and pedestrian safety  
32 projects and programs.

33 (2) Prior to imposing the fee, the board of the county  
34 transportation agency shall make a finding of fact by two-thirds  
35 of all the members of the board of that county transportation  
36 agency that those programs bear a relationship or benefit to the  
37 motor vehicles that will pay the fee.

38 (c) The purpose of the congestion management program is to  
39 address motor vehicle congestion.

1 (d) Not more than 5 percent of the fees distributed to the  
2 county transportation agency shall be used by the agency for its  
3 administrative costs associated with the program.

4 65089.22. Prior to the imposition of the fee by the county  
5 transportation agency, a specific program with performance  
6 measures and a budget shall first be developed and adopted by  
7 the county transportation agency at a noticed public hearing.

8 65089.23. The county transportation agency shall have an  
9 independent audit performed on the specific program adopted  
10 pursuant to Section 65089.22 with the review and report  
11 provided to the board at a noticed public hearing.

12 65089.24. The county transportation agency shall provide a  
13 report to the Legislature on the specific program adopted  
14 pursuant to Section 65089.22 by July 1, 2011.

15 SEC. 2. Chapter 2.67 (commencing with Section 65089.30) is  
16 added to Division 1 of Title 7 of the Government Code, to read:

17  
18 CHAPTER 2.67. ENVIRONMENTAL MITIGATION OF MOTOR  
19 VEHICLES IN THE BAY AREA  
20

21 65089.30. (a) As used in this chapter, “board” means the  
22 governing body of the Bay Area Air Quality Management  
23 District.

24 (b) The board may impose a fee of up to five dollars (\$5) on  
25 motor vehicles registered within the counties in its jurisdiction if  
26 the members of the board adopt a resolution providing for both  
27 the fee and a corresponding program for the mitigation of the  
28 impacts of motor vehicles on the environment submitted to the  
29 board as set forth in Sections 65089.31 to 65089.34, inclusive.  
30 Adoption by the board requires a vote of approval of two-thirds  
31 of all the members of the board.

32 (c) A fee imposed pursuant to this section shall not become  
33 operative until six months after the effective date of this section  
34 and pursuant to the resolution adopted by the board in  
35 subdivision (b).

36 (d) The board may adopt a resolution by majority vote to cease  
37 collection of the fee commencing on a date determined by the  
38 board in consultation with the Department of Motor Vehicles.

39 65089.31. (a) The net revenues available pursuant to Section  
40 9250.4 of the Vehicle Code shall be distributed as follows:

1 (1) Fifty percent to the Bay Area Air Quality Management  
2 District. Of these revenues, 75 percent shall be expended on  
3 projects in the county of origin, as determined by the district, and  
4 25 percent shall be expended on regional projects.

5 (2) Fifty percent to the California Regional Water Quality  
6 Control Board for the San Francisco Bay Region. Of these  
7 revenues, 75 percent shall be expended on projects in the county  
8 of origin, as determined by the board, and 25 percent shall be  
9 expended on regional projects.

10 (b) (1) The revenues may be used to pay for programs that  
11 mitigate the impacts of motor vehicles on the environment,  
12 including, but not limited to, stormwater runoff mitigation  
13 projects, water quality improvement projects, and air quality  
14 improvement projects, including those that address emissions  
15 that contribute to climate change. The programs shall have a  
16 relationship or benefit to the owners of motor vehicles that are  
17 paying the fee.

18 (2) Prior to the imposition of the fee, the board shall make a  
19 finding of fact by a two-thirds vote of all of the members of the  
20 board that those programs bear a relationship or benefit to the  
21 motor vehicles that will pay the fee.

22 (c) *Not more than 5 percent of the fees distributed to the Bay*  
23 *Area Quality Management District or the California Regional*  
24 *Water Quality Control Board for the San Francisco Bay Region*  
25 *shall be used by those entities for their administrative costs*  
26 *associated with the programs specified in this section.*

27 65089.32. Prior to the imposition of the fee by the board, a  
28 specific program with performance measures and a budget shall  
29 first be developed and adopted by the Bay Area Air Quality  
30 Management District and the California Regional Water Quality  
31 Control Board for the San Francisco Bay Region for the  
32 anticipated revenues each agency is expected to receive pursuant  
33 to Section 65089.31. The adoption shall occur at a noticed public  
34 hearing of each agency. Each agency shall submit the program  
35 and budget to the board.

36 65089.33. The Bay Area Air Quality Management District  
37 and the California Regional Water Quality Control Board for the  
38 San Francisco Bay Region shall have an independent audit  
39 performed on the specific program adopted pursuant to Section



1 65089.32 with the review and report provided to each agency at a  
2 noticed public hearing.

3 65089.34. The Bay Area Air Quality Management District  
4 and the California Regional Water Quality Control Board for the  
5 San Francisco Bay Region shall provide a report to the  
6 Legislature on the specific program adopted pursuant to Section  
7 65089.32 by July 1, 2011.

8 SEC. 3. Section 9250.3 is added to the Vehicle Code, to read:

9 9250.3. (a) The department shall, if requested by a county  
10 transportation agency, collect the fee imposed pursuant to  
11 Section 65089.20 of the Government Code upon the registration  
12 or renewal of registration of any motor vehicle registered in the  
13 county, except those vehicles that are expressly exempted under  
14 this code from the payment of registration fees.

15 (b) A county transportation agency shall pay for the initial  
16 setup and programming costs identified by the Department of  
17 Motor Vehicles through a direct contract with the department.  
18 Any direct contract payment by the county transportation agency  
19 shall be repaid, with no restriction on the funds, to the county  
20 transportation agency as part of the initial revenues distributed.  
21 Regular Department of Motor Vehicles collection costs shall be  
22 in accordance with subdivision (c). These costs shall not be  
23 counted against the 5-percent administration cost limit specified  
24 in subdivision (d) of Section 65089.21.

25 (c) After deducting all costs incurred pursuant to this section,  
26 the department shall distribute the net revenues to the county  
27 transportation agency.

28 (d) As used in this section, "county transportation agency" has  
29 the same meaning as in subdivision (a) of Section 65089.20 of  
30 the Government Code.

31 SEC. 4. Section 9250.4 is added to the Vehicle Code, to read:

32 9250.4. (a) The department shall, if requested by the  
33 governing board of the Bay Area Air Quality Management  
34 District, collect the fee imposed pursuant to Section 65089.30 of  
35 the Government Code upon the registration or renewal of  
36 registration of any motor vehicle registered in a county within the  
37 jurisdiction of the board, except those vehicles that are expressly  
38 exempted under this code from the payment of registration fees.

39 (b) The board shall pay for the initial setup and programming  
40 costs identified by the Department of Motor Vehicles through a

1 direct contract with the department. Any direct contract payment  
2 by the board shall be repaid, with no restriction on the funds, to  
3 the board as part of the initial revenues available for distribution.  
4 Regular Department of Motor Vehicles collection costs shall be  
5 in accordance with subdivision (c). *These costs shall not be*  
6 *counted against the 5 percent administration cost limit specified*  
7 *in subdivision (c) of Section 65089.31.*  
8 (c) After deducting all costs incurred pursuant to this section,  
9 the department shall distribute the net revenues pursuant to  
10 subdivision (a) of Section 65089.31 of the Government Code.

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AMENDED IN SENATE APRIL 19, 2006

**SENATE BILL**

**No. 1611**

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**Introduced by Senator Simitian**

February 24, 2006

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An act to add Section 9250.6 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1611, as amended, Simitian. Congestion management fees.

Existing law provides for creation of congestion management agencies in various counties with specified powers and duties relative to management of transportation congestion. Existing law provides for the imposition by air districts and certain other local agencies of fees on the registration of motor vehicles in certain areas of the state that are in addition to the basic vehicle registration fee collected by the Department of Motor Vehicles.

This bill would authorize a congestion management agency ~~to impose, or where there is no congestion management agency, the board of supervisors, to place a majority vote ballot measure before the voters of a county authorizing the imposition of an annual fee of up to \$20~~ \$25 on each motor vehicle registered within the county for transportation projects and programs with a relationship or benefit to the persons paying the fee. The bill would require ~~a specific transportation program with performance measures and a budget to be adopted before the fee is imposed. The bill would require the resolution imposing the fee to incorporate the specific transportation program to be funded by the fee and specified findings of fact. The bill would require the resolution to be adopted by a 2/3 vote of the governing board. The bill would require the agency to have an~~

~~independent audit conducted annually on the program and to provide a specified report to the Legislature~~ *the ballot measure resolution to be adopted by a majority vote of the governing board of the congestion management agency or the board of supervisors, as appropriate, at a noticed public hearing and would also require the resolution to contain a specified finding of fact.* The bill would require the Department of Motor Vehicles, if requested, to collect the fee and distribute the proceeds, after deduction of specified administrative costs, to the agency *or the board of supervisors, as appropriate,* and would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 9250.6 is added to the Vehicle Code, to  
2     read:  
3     9250.6. (a) A county congestion management agency created  
4     pursuant to Chapter 2.6 (commencing with Section 65088) of  
5     ~~Division 1 of Title 7 of the Government Code may, impose an~~  
6     ~~annual fee of up to twenty dollars (\$20) on each motor vehicle~~  
7     ~~registered in the county, with the net revenues to be used for~~  
8     ~~transportation-related programs that have a relationship or benefit~~  
9     ~~to the persons that pay the fee, including the provision of~~  
10    ~~required matching funds for funding made available for~~  
11    ~~transportation from state general obligation bonds. The agency~~  
12    ~~may impose the fee only if the governing board adopts a~~  
13    ~~resolution providing both for the fee and the specific~~  
14    ~~transportation program in subdivision (b). The resolution shall~~  
15    ~~also contain a finding of fact that the projects and programs to be~~  
16    ~~funded by the fee have a relationship or benefit to the persons~~  
17    ~~who will be paying the fee. Adoption of the fee, the program, and~~  
18    ~~the finding of fact shall all require a two-thirds vote of the~~  
19    ~~governing board at a noticed public hearing.~~  
20    (b) Prior to imposition of the fee, the governing board shall  
21    adopt a specific program for expenditure of fee revenues, with  
22    performance measures and a budget. The program shall be  
23    adopted by the governing board at a noticed public hearing.  
24    (c) ~~The congestion management agency shall arrange for an~~  
25    ~~independent audit to be conducted annually on the specific~~

1 ~~program adopted pursuant to subdivision (b), with the auditor's~~  
2 ~~review and report to be provided annually to the governing board~~  
3 ~~at a noticed public hearing.~~

4 ~~(d) The congestion management agency shall provide a report~~  
5 ~~to the Legislature on the specific program adopted pursuant to~~  
6 ~~subdivision (b). The report shall include, but need not be limited~~  
7 ~~to, an evaluation of the impact and performance improvements~~  
8 ~~funded by the fee and the cost effectiveness of the program.~~

9 *Division 1 of Title 7 of the Government Code, or where there is*  
10 *no county congestion management agency, the board of*  
11 *supervisors, may place a majority vote ballot measure before the*  
12 *voters of a county to authorize an increase in the vehicle*  
13 *registration fee for transportation-related projects and*  
14 *programs. The ballot measure resolution shall be adopted by a*  
15 *majority vote of the governing board of a county congestion*  
16 *management agency, or where there is no county congestion*  
17 *management agency, the board of supervisors, at a noticed*  
18 *public hearing. The resolution shall also contain a finding of fact*  
19 *that the projects and programs to be funded by the fee have a*  
20 *relationship or benefit to the persons who will be paying the fee.*  
21 *Adoption of the resolution and the finding of fact shall all require*  
22 *a majority vote of the governing board or the board of*  
23 *supervisors, as appropriate, at a noticed public hearing.*

24 *(b) Pursuant to a ballot measure adopted under subdivision*  
25 *(a), the voters of a county may impose an annual fee of up to*  
26 *twenty-five dollars (\$25) on each motor vehicle registered in the*  
27 *county, with the net revenues to be used for*  
28 *transportation-related programs that have a relationship or*  
29 *benefit to the persons that pay the fee, including, but not limited*  
30 *to, the provision of required matching funds for funding made*  
31 *available for transportation from state general obligation bonds,*  
32 *congestion mitigation, and pollution prevention.*

33 ~~(e)–~~

34 *(c) The department shall, if requested by a congestion*  
35 *management agency or the board of supervisors, as appropriate,*  
36 *collect the fee imposed approved by the voters pursuant to this*  
37 *section upon the registration or renewal of registration of any*  
38 *motor vehicle registered in the county, except those vehicles that*  
39 *are expressly exempt under this code from the payment of*  
40 *registration fees. The agency or the board of supervisors, as*

1 *appropriate*, shall pay for the initial setup and programming  
2 costs identified by the department through a direct contract with  
3 the department. Any direct contract payment shall be repaid, with  
4 no restriction on the use of funds, to the agency *or the board of*  
5 *supervisors, as appropriate*, as part of the initial net revenues  
6 distributed. After deducting all nonreimbursed costs incurred by  
7 the department pursuant to this section, the department shall  
8 distribute the net revenues to the agency *or the board of*  
9 *supervisors, as appropriate*.

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AMENDED IN ASSEMBLY APRIL 26, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2538**

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**Introduced by Assembly Member Wolk**

February 23, 2006

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An act to amend Section 14527 of the Government Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as amended, Wolk. Transportation funds: planning and programming regional agencies.

Existing law generally provides for programming and allocation of funds for transportation capital improvement projects through the State Transportation Improvement Program process administered by the California Transportation Commission. Existing law requires 25% of available funds to be programmed and expended on interregional improvement projects nominated by the Department of Transportation, and 75% of available funds to be programmed and expended on regional improvement projects nominated by regional transportation planning agencies or county transportation commissions, as applicable, through adoption of a regional transportation improvement program. Existing law authorizes a transportation planning agency or county transportation commission to request and receive up to 1% of regional improvement fund expenditures for the purposes of project planning, programming, and monitoring, but authorizes an amount up to 5% of those expenditures for a transportation planning agency or county transportation commission not receiving federal metropolitan planning funds.

This bill would instead authorize each transportation planning agency or county transportation commission to request and receive up to 5% of those funds for the purposes of project planning, programming, and monitoring. The bill would also establish a minimum amount to be allocated for this purpose. The bill would change the references to “regional improvement funds” to instead refer to “county—~~shares.~~” *share.*” The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14527 of the Government Code is  
2 amended to read:  
3 14527. (a) After consulting with the department, the regional  
4 transportation planning agencies and county transportation  
5 commissions shall adopt and submit to the commission and the  
6 department, not later than December 15, 2001, and December 15  
7 of each odd-numbered year thereafter, a five-year regional  
8 transportation improvement program in conformance with  
9 Section 65082. In counties where a county transportation  
10 commission has been created pursuant to Chapter 2  
11 (commencing with Section 130050) of Division 12 of the Public  
12 Utilities Code, that commission shall adopt and submit the  
13 county transportation improvement program, in conformance  
14 with Sections 130303 and 130304 of that code, to the  
15 multicounty designated transportation planning agency. Other  
16 information, including a program for expenditure of local or  
17 federal funds, may be submitted for information purposes with  
18 the program, but only at the discretion of the transportation  
19 planning agencies or the county transportation commissions. As  
20 used in this section, “county transportation commission” includes  
21 a transportation authority created pursuant to Chapter 2  
22 (commencing with Section 130050) of Division 12 of the Public  
23 Utilities Code.  
24 (b) The regional transportation improvement program shall  
25 include all projects to be funded with the county share under  
26 paragraph (2) of subdivision (a) of Section 164 of the Streets and  
27 Highways Code. The regional programs shall be limited to



1 projects to be funded in whole or in part with the county share  
2 that shall include all projects to receive allocations by the  
3 commission during the following five fiscal years. For each  
4 project, the total expenditure for each project component and the  
5 total amount of commission allocation and the year of allocation  
6 shall be stated. The total cost of projects to be funded with the  
7 county share shall not exceed the amount specified in the fund  
8 estimate made by the commission pursuant to Section 14525.

9 (c) The regional transportation planning agencies and county  
10 transportation commissions may recommend projects to improve  
11 state highways with the interregional share pursuant to  
12 subdivision (b) of Section 164 of the Streets and Highways Code.  
13 The recommendations shall be separate and distinct from the  
14 regional transportation improvement program. A project  
15 recommended for funding pursuant to this subdivision shall  
16 constitute a usable segment and shall not be a condition for  
17 inclusion of other projects in the regional transportation  
18 improvement program.

19 (d) The department may nominate or recommend the inclusion  
20 of projects in the regional transportation improvement program  
21 to improve state highways with the county share pursuant to  
22 paragraph (2) of subdivision (a) *and subdivision (e)* of Section  
23 164 of the Streets and Highways Code. A regional transportation  
24 planning agency and a county transportation commission shall  
25 have sole authority for determining whether any of the project  
26 nominations or recommendations are accepted and included in  
27 the regional transportation improvement program adopted and  
28 submitted pursuant to this section. This authority provided to a  
29 regional transportation planning agency or to a county  
30 transportation commission extends only to a project located  
31 within its jurisdiction.

32 (e) Major projects shall include current costs updated as of  
33 November 1 of the year of submittal and escalated to the  
34 appropriate year, and shall be consistent with, and provide the  
35 information required in, subdivision (b) of Section 14529.

36 (f) The regional transportation improvement program may not  
37 change the project delivery milestone date of any project as  
38 shown in the prior adopted state transportation improvement  
39 program without the consent of the department or other agency  
40 responsible for the project's delivery.

(g) Projects may not be included in the regional transportation improvement program without a complete project study report or, for a project that is not on a state highway, a project study report equivalent or major investment study.

(h) Each transportation planning agency and county transportation commission may request and receive an amount not to exceed 5 percent of its county share for the purposes of project planning, programming, and monitoring. In no case shall these amounts be less than the respective percentage *requested* of the county share for a state transportation improvement program of one billion two hundred fifty million dollars (\$1,250,000,000) per year.

~~(i) For the purposes of this section, “county share” shall mean “regional improvement funds” and “interregional share” shall mean interregional improvement funds.~~

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 27, 2006

**SENATE BILL**

**No. 1431**

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**Introduced by Senator Cox**

(Principal coauthor: Assembly Member Wolk)

(Coauthors: Assembly Members Benoit, Garcia, Harman, Shirley  
Horton, Mountjoy, Strickland, Tran, and Walters)

February 22, 2006

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An act to amend Sections 20133 and 20175.2 of, and to add and repeal Article 5.5 (commencing with Section 20193) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1431, as amended, Cox. Public contracts: design-build contracting: cities, counties and special districts.

Existing law requires public entities to comply with certain procedures in soliciting and evaluating bids and awarding contracts for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2011, permits cities in the Counties of Solano and Yolo, with the approval of the city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions.

This bill would instead permit any city, until January 1, 2017, with the approval of the city council, to enter into specified design-build contracts, as defined, in accordance with specified provisions, and requires that contracts costing more than \$2,500,000 be awarded by those cities to the lowest responsible bidder or by best value, as

defined, and would require the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the design-build program.

Existing law, until January 1, 2011, authorizes certain counties, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions, and requires that contracts costing more than \$2,500,000 ~~to be~~ awarded by those counties to the lowest responsible bidder or by best value, as defined.

This bill would authorize, until January 1, 2017, any county, with the approval of the board of supervisors, to enter into design-build contracts, as defined, in accordance with specified provisions, would require that contracts costing more than \$2,500,000 be awarded by the county to the lowest responsible bidder or by best value, as defined, and would require the Legislative Analyst's Office, on or before January 1, 2010, to report to the Legislature regarding the effectiveness of the design-build program.

This bill would also authorize, until January 1, 2017, any special district, as defined, upon approval of its governing body, to enter into design-build contracts, as defined, in accordance with specified provisions, would require that contracts costing more than \$2,500,000 ~~to be~~ awarded by the special district to the lowest responsible bidder or by best value, as defined, and would require the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the design-build program.

This bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 20133 of the Public Contract Code is  
2 amended to read:

3     20133. (a) A county, with approval of the board of  
4 supervisors, may utilize an alternative procedure for bidding on  
5 building construction projects in the county in excess of two  
6 million five hundred thousand dollars (\$2,500,000) and may  
7 award the project using either the lowest responsible bidder or by  
8 best value.

9     (b) (1) It is the intent of the Legislature to enable counties to  
10 utilize cost-effective options for building and modernizing public  
11 facilities. It is not the intent of the Legislature to authorize this  
12 procedure for ~~transportation facilities, including~~ streets, roads,  
13 and bridges.

14     (2) The Legislature also finds and declares that utilizing a  
15 design-build contract requires a clear understanding of the roles  
16 and responsibilities of each participant in the design-build  
17 process. The Legislature also finds that the cost-effective benefits  
18 to the counties are achieved by shifting the liability and risk for  
19 cost containment and project completion to the design-build  
20 entity.

21     (3) It is the intent of the Legislature to provide an alternative  
22 and optional procedure for bidding and building construction  
23 projects for counties.

24     (4) The design-build approach may be used, but is not limited  
25 to use, when it is anticipated that it will: reduce project cost,  
26 expedite project completion, or provide design features not  
27 achievable through the design-bid-build method.

28     (5) If the board of supervisors elects to proceed under this  
29 section, the board of supervisors shall establish and enforce for  
30 design-build projects a labor compliance program containing the  
31 requirements outlined in Section 1771.5 of the Labor Code, or it  
32 shall contract with a third party to operate a labor compliance  
33 program containing the requirements outlined in Section 1771.5  
34 of the Labor Code. This requirement shall not apply to any  
35 project where the county or the design-build entity has entered  
36 into any collective bargaining agreement or agreements that bind  
37 all of the contractors performing work on the projects.

38     (c) As used in this section:

1 (1) “Best value” means a value determined by objective  
2 criteria related to price, features, functions, small business  
3 contracting plans, past performance, and life cycle costs.

4 (2) “Design-build” means a procurement process in which  
5 both the design and construction of a project are procured from a  
6 single entity.

7 (3) “Design-build entity” means a partnership, corporation, or  
8 other legal entity that is able to provide appropriately licensed  
9 contracting, architectural, and engineering services as needed  
10 pursuant to a design-build contract.

11 (4) “*Project*” means the construction of public improvements,  
12 except for streets, roads, and bridges.

13 (d) Design-build projects shall progress in a four-step process,  
14 as follows:

15 (1) (A) The county shall prepare a set of documents setting  
16 forth the scope of the project. The documents may include, but  
17 are not limited to, the size, type and desired design character of  
18 the project and site, performance specifications covering the  
19 quality of materials, equipment, and workmanship, preliminary  
20 plans or project layouts, or any other information deemed  
21 necessary to describe adequately the county’s needs. The  
22 performance specifications and any plans shall be prepared by a  
23 design professional who is duly licensed and registered in  
24 California.

25 (B) Any architect or engineer retained by the county to assist  
26 in the development of the project specific documents shall not be  
27 eligible to participate in the preparation of a bid with any  
28 design-build entity for that project.

29 (2) (A) Based on the documents prepared in paragraph (1), the  
30 county shall prepare a request for proposals that invites interested  
31 parties to submit competitive sealed proposals in the manner  
32 prescribed by the county. The request for proposals shall include,  
33 but is not limited to, the following elements:

34 (i) Identification of the basic scope and needs of the project or  
35 contract, the expected cost range, and other information deemed  
36 necessary by the county to inform interested parties of the  
37 contracting opportunity, to include the methodology that will be  
38 used by the county to evaluate proposals and specifically if the  
39 contract will be awarded to the lowest responsible bidder.

1 (ii) Significant factors which the county reasonably expects to  
2 consider in evaluating proposals, including cost or price and all  
3 nonprice related factors.

4 (iii) The relative importance of weight assigned to each of the  
5 factors identified in the request for proposals.

6 (B) With respect to clause (iii) of subparagraph (A), if a  
7 nonweighted system is used, the agency shall specifically  
8 disclose whether all evaluation factors other than cost or price  
9 when combined are:

10 (i) Significantly more important than cost or price.

11 (ii) Approximately equal in importance to cost or price.

12 (iii) Significantly less important than cost or price.

13 (C) If the county chooses to reserve the right to hold  
14 discussions or negotiations with responsive bidders, it shall so  
15 specify in the request for proposal and shall publish separately or  
16 incorporate into the request for proposal applicable rules and  
17 procedures to be observed by the county to ensure that any  
18 discussions or negotiations are conducted in good faith.

19 (3) (A) The county shall establish a procedure to prequalify  
20 design-build entities using a standard questionnaire developed by  
21 the county or a questionnaire developed by the Department of  
22 Industrial Relations. In preparing its own questionnaire, the  
23 county shall consult with the construction industry, including  
24 representatives of the building trades and surety industry. This  
25 questionnaire shall require information including, but not limited  
26 to, all of the following:

27 (i) If the design-build entity is a partnership, limited  
28 partnership, or other association, a listing of all of the partners,  
29 general partners, or association members known at the time of  
30 bid submission who will participate in the design-build contract,  
31 including, but not limited to, mechanical subcontractors.

32 (ii) Evidence that the members of the design-build entity have  
33 completed, or demonstrated the experience, competency,  
34 capability, and capacity to complete projects of similar size,  
35 scope, or complexity, and that proposed key personnel have  
36 sufficient experience and training to competently manage and  
37 complete the design and construction of the project, as well as a  
38 financial statement that assures the county that the design-build  
39 entity has the capacity to complete the project.

1 (iii) The licenses, registration, and credentials required to  
2 design and construct the project, including information on the  
3 revocation or suspension of any license, credential, or  
4 registration.

5 (iv) Evidence that establishes that the design-build entity has  
6 the capacity to obtain all required payment and performance  
7 bonding, liability insurance, and errors and omissions insurance.

8 (v) Any prior serious or willful violation of the California  
9 Occupational Safety and Health Act of 1973, contained in Part 1  
10 (commencing with Section 6300) of Division 5 of the Labor  
11 Code or the federal Occupational Safety and Health Act of 1970  
12 (Public Law 91-596), settled against any member of the  
13 design-build entity, and information concerning workers'  
14 compensation experience history and worker safety program.

15 (vi) Information concerning any debarment, disqualification,  
16 or removal from a federal, state, or local government public  
17 works project. Any instance where an entity, its owners, officers,  
18 or managing employees submitted a bid on a public works  
19 project and were found to be nonresponsive, or were found by an  
20 awarding body not to be a responsible bidder.

21 (vii) Any instance where the entity, its owner, officers, or  
22 managing employees defaulted on a construction contract.

23 (viii) Any violations of the Contractors' State License Law  
24 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
25 Business and Professions Code), excluding alleged violations of  
26 federal or state law including the payment of wages, benefits,  
27 apprenticeship requirements, or personal income tax withholding,  
28 or of Federal Insurance Contribution Act (FICA) withholding  
29 requirements settled against any member of the design-build  
30 entity.

31 (ix) Information concerning the bankruptcy or receivership of  
32 any member of the design-build entity, including information  
33 concerning any work completed by a surety.

34 (x) Information concerning all settled adverse claims, disputes,  
35 or lawsuits between the owner of a public works project and any  
36 member of the design-build entity during the five years preceding  
37 submission of a bid pursuant to this section, in which the claim,  
38 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
39 Information shall also be provided concerning any work  
40 completed by a surety during this period.



1 (xi) In the case of a partnership or other association, that is not  
2 a legal entity, a copy of the agreement creating the partnership or  
3 association and specifying that all partners or association  
4 members agree to be fully liable for the performance under the  
5 design-build contract.

6 (B) The information required pursuant to this subdivision shall  
7 be verified under oath by the entity and its members in the  
8 manner in which civil pleadings in civil actions are verified.  
9 Information that is not a public record pursuant to the California  
10 Public Records Act (Chapter 3.5, Division 7, Title 1 of the  
11 Government Code) shall not be open to public inspection.

12 (4) The county shall establish a procedure for final selection of  
13 the design-build entity. Selection shall be based on either of the  
14 following criteria:

15 (A) A competitive bidding process resulting in lump-sum bids  
16 by the prequalified design-build entities. Awards shall be made  
17 to the lowest responsible bidder.

18 (B) A county may use a design-build competition based upon  
19 best value and other criteria set forth in paragraph (2) of  
20 subdivision (d). The design-build competition shall include the  
21 following elements:

22 (i) Competitive proposals shall be evaluated by using only the  
23 criteria and selection procedures specifically identified in the  
24 request for proposal. However, the following minimum factors  
25 shall each represent at least 10 percent of the total weight of  
26 consideration given to all criteria factors; price, technical design  
27 and construction expertise, life cycle costs over 15 years or more,  
28 skilled labor force availability, and acceptable safety record.

29 (ii) Once the evaluation is complete, the top three responsive  
30 bidders shall be ranked sequentially from the most advantageous  
31 to the least.

32 (iii) The award of the contract shall be made to the responsible  
33 bidder whose proposal is determined, in writing, to be the most  
34 advantageous.

35 (iv) Notwithstanding any provision of this code, upon issuance  
36 of a contract award, the county shall publicly announce its award,  
37 identifying the contractor to whom the award is made, along with  
38 a written decision supporting its contract award and stating the  
39 basis of the award. The notice of award shall also include the  
40 county's second and third ranked design-build entities.

(v) For the purposes of this paragraph, “skilled labor force availability” shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder’s “safety record” shall be deemed “acceptable” if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

1 (1) Provide public notice of the availability of work to be  
2 subcontracted in accordance with the publication requirements  
3 applicable to the competitive bidding process of the county.

4 (2) Provide a fixed date and time on which the subcontracted  
5 work will be awarded in accordance with the procedure  
6 established pursuant to this section.

7 (g) The minimum performance criteria and design standards  
8 established pursuant to paragraph (1) of subdivision (d) shall be  
9 adhered to by the design-build entity. Any deviations from those  
10 standards may only be allowed by written consent of the county.

11 (h) The county may retain the services of a design professional  
12 or construction project manager, or both, throughout the course  
13 of the project in order to ensure compliance with this section.

14 (i) Contracts awarded pursuant to this section shall be valid  
15 until the project is completed.

16 (j) Nothing in this section is intended to affect, expand, alter,  
17 or limit any rights or remedies otherwise available at law.

18 (k) (1) If the county elects to award a project pursuant to this  
19 section retention proceeds withheld by the county from the  
20 design-build entity shall not exceed 5 percent if a performance  
21 and payment bond, issued by an admitted surety insurer, is  
22 required in the solicitation of bids.

23 (2) In a contract between the design-build entity and the  
24 subcontractor, and in a contract between a subcontractor and any  
25 subcontractor thereunder, the percentage of the retention  
26 proceeds withheld may not exceed the percentage specified in the  
27 contract between the county and the design-build entity. If the  
28 design-build entity provides written notice to any subcontractor  
29 who is not a member of the design-build entity, prior to or at the  
30 time the bid is requested, that a bond may be required and the  
31 subcontractor subsequently is unable or refuses to furnish a bond  
32 to the design-build entity, then the design-build entity may  
33 withhold retention proceeds in excess of the percentage specified  
34 in the contract between the county and the design-build entity  
35 from any payment made by the design-build entity to the  
36 subcontractor.

37 (l) Each county that elects to proceed under this section and  
38 uses the design-build method on a public works project shall  
39 submit to the Legislative Analyst's Office before December 1,  
40 2009, a report containing a description of each public works

1 project procured through the design-build process and completed  
2 after January 1, 2007, and before November 1, 2009. The report  
3 shall include, but shall not be limited to, all of the following  
4 information:

5 (1) The type of project.  
6 (2) The gross square footage of the project.  
7 (3) The design-build entity that was awarded the project.  
8 (4) The estimated and actual length of time to complete the  
9 project.

10 (5) The estimated and actual project costs.  
11 (6) A description of any written protests concerning any aspect  
12 of the solicitation, bid, proposal, or award of the design-build  
13 project, including the resolution of the protests.

14 (7) An assessment of the prequalification process and criteria.

15 (8) An assessment of the effect of retaining ~~5-percent~~ 5  
16 percent retention on the project.

17 (9) A description of the Labor Force Compliance Program and  
18 an assessment of the project impact, where required.

19 (10) A description of the method used to award the contract. If  
20 best value was the method, the report shall describe the factors  
21 used to evaluate the bid, including the weighting of each factor  
22 and an assessment of the effectiveness of the methodology.

23 (11) An assessment of the project impact of “skilled labor  
24 force availability.”

25 (12) An assessment of the design-build dollar limits on county  
26 projects. This assessment shall include projects where the county  
27 wanted to use design-build and was precluded by the dollar  
28 limitation. This assessment shall also include projects where the  
29 best value method was not used due to dollar limitations.

30 (13) An assessment of the most appropriate uses for the  
31 design-build approach.

32 (m) Any county that elects to not use the authority granted by  
33 this section may submit a report to the Legislative Analyst’s  
34 Office explaining why the county elected to not use the  
35 design-build method.

36 (n) On or before January 1, 2010, the Legislative Analyst shall  
37 report to the Legislature on the use of the design-build method by  
38 counties pursuant to this section, including the information listed  
39 in subdivision (l). The report may include recommendations for  
40 modifying or extending this section.

1 (o) This section shall remain in effect only until January 1,  
2 2017, and as of that date is repealed, unless a later enacted  
3 statute, that is enacted before January 1, 2017, deletes or extends  
4 that date.

5 SEC. 2. Section 20175.2 of the Public Contract Code is  
6 amended to read:

7 20175.2. (a) A city, upon approval of the city council, may  
8 utilize an alternative procedure for bidding on building  
9 construction projects in the city in excess of two million five  
10 hundred thousand dollars (\$2,500,000) and may award the  
11 project using either the lowest responsible bidder or by best  
12 value.

13 (b) (1) It is the intent of the Legislature to enable cities to  
14 utilize cost-effective options for building and modernizing public  
15 facilities. The Legislature also recognizes the national trend,  
16 including authorization in California, to allow public entities to  
17 utilize design-build contracts as a project delivery method. It is  
18 not the intent of the Legislature to authorize this procedure for  
19 ~~transportation facilities, including~~ streets, roads, and bridges.

20 (2) The Legislature also finds and declares that utilizing a  
21 design-build contract requires a clear understanding of the roles  
22 and responsibilities of each participant in the design-build  
23 process. The Legislature also finds that the cost-effective benefits  
24 to cities are achieved by shifting the liability and risk for cost  
25 containment and project completion to the design-build entity.

26 (3) It is the intent of the Legislature to provide an alternative  
27 and optional procedure for bidding and building construction  
28 projects for cities.

29 (4) The design-build approach may be used, but is not limited  
30 to use, when it is anticipated that it will: reduce project cost,  
31 expedite project completion, or provide design features not  
32 achievable through the design-bid-build method.

33 (5) If a city council elects to proceed under this section, the  
34 city council shall establish and enforce, for design-build projects,  
35 a labor compliance program containing the requirements outlined  
36 in Section 1771.5 of the Labor Code, or it shall contract with a  
37 third party to operate a labor compliance program containing the  
38 requirements outlined in Section 1771.5 of the Labor Code. This  
39 requirement shall not apply to any project where the city or the  
40 design-build entity has entered into any collective bargaining

1 agreement or agreements that bind all of the contractors  
2 performing work on the projects.

3 (c) As used in this section:

4 (1) “Best value” means a value determined by objectives  
5 relative to price, features, functions, small business contracting  
6 plans, past performance, and life cycle costs.

7 (2) “Design-build” means a procurement process in which  
8 both the design and construction of a project are procured from a  
9 single entity.

10 (3) “Design-build entity” means a partnership, corporation, or  
11 other legal entity that is able to provide appropriately licensed  
12 contracting, architectural, and engineering services, as needed,  
13 pursuant to a design-build contract.

14 (4) “*Project*” means the construction of public improvements,  
15 except for streets, roads, and bridges.

16 (d) Design-build projects shall progress in a four-step process,  
17 as follows:

18 (1) (A) The city shall prepare a set of documents setting forth  
19 the scope of the project. The documents may include, but are not  
20 limited to, the size, type, and desired design character of the  
21 project and site, performance specifications covering the quality  
22 of materials, equipment, and workmanship, preliminary plans or  
23 project layouts, or any other information deemed necessary to  
24 describe adequately the city’s needs. The performance  
25 specifications and any plans shall be prepared by a design  
26 professional who is duly licensed and registered in California.

27 (B) Any architect or engineer retained by the city to assist in  
28 the development of the project-specific documents shall not be  
29 eligible to participate in the preparation of a bid with any  
30 design-build entity for that project.

31 (2) (A) Based on the documents prepared in paragraph (1), the  
32 city shall prepare a request for proposals that invites interested  
33 parties to submit competitive sealed proposals in the manner  
34 prescribed by the city. The request for proposals shall include,  
35 but is not limited to, the following elements:

36 (i) Identification of the basic scope and needs of the project or  
37 contract, the expected cost range, and other information deemed  
38 necessary by the city to inform interested parties of the  
39 contracting opportunity, to include the methodology that will be

1 used by the city to evaluate proposals, and specifically if the  
2 contract will be awarded to the lowest responsible bidder.

3 (ii) Significant factors which the city reasonably expects to  
4 consider in evaluating proposals, including cost or price and all  
5 nonprice related factors.

6 (iii) The relative importance of weight assigned to each of the  
7 factors identified in the request for proposals.

8 (B) With respect to clause (iii) of subparagraph (A), if a  
9 nonweighted system is used, the agency shall specifically  
10 disclose whether all evaluation factors, other than cost or price,  
11 when combined are:

12 (i) Significantly more important than cost or price.

13 (ii) Approximately equal in importance to cost or price.

14 (iii) Significantly less important than cost or price.

15 (C) If the city chooses to reserve the right to hold discussions  
16 or negotiations with responsive bidders, it shall so specify in the  
17 request for proposal and shall publish separately, or incorporate  
18 into the request for proposal, applicable rules and procedures to  
19 be observed by the city to ensure that any discussions or  
20 negotiations are conducted in good faith.

21 (3) (A) The city shall establish a procedure to prequalify  
22 design-build entities using a standard questionnaire developed by  
23 the city or a questionnaire developed by the Department of  
24 Industrial Relations. In preparing its own questionnaire, the city  
25 shall consult with the construction industry, including  
26 representatives of the building trades and surety industry. This  
27 questionnaire shall require information including, but not limited  
28 to, all of the following:

29 (i) If the design-build entity is a partnership, limited  
30 partnership, or other association, a listing of all of the partners,  
31 general partners, or association members known at the time of  
32 bid submission who will participate in the design-build contract,  
33 including, but not limited to, mechanical subcontractors.

34 (ii) Evidence that the members of the design-build entity have  
35 completed, or demonstrated the experience, competency,  
36 capability, and capacity to complete projects of similar size,  
37 scope, or complexity, and that proposed key personnel have  
38 sufficient experience and training to competently manage and  
39 complete the design and construction of the project, as well as a

1 financial statement that assures the city that the design-build  
2 entity has the capacity to complete the project.

3 (iii) The licenses, registration, and credentials required to  
4 design and construct the project, including information on the  
5 revocation or suspension of any license, credential, or  
6 registration.

7 (iv) Evidence that establishes that the design-build entity has  
8 the capacity to obtain all required payment and performance  
9 bonding, liability insurance, and errors and omissions insurance.

10 (v) Any prior serious or willful violation of the California  
11 Occupational Safety and Health Act of 1973, contained in Part 1  
12 (commencing with Section 6300) of Division 5 of the Labor  
13 Code or the federal Occupational Safety and Health Act of 1970  
14 (Public Law 91-596) settled against any member of the  
15 design-build entity, and information concerning workers'  
16 compensation experience history and worker safety program.

17 (vi) Information concerning any debarment, disqualification,  
18 or removal from a federal, state, or local government public  
19 works project. Any instance where an entity, its owners, officers,  
20 or managing employees submitted a bid on a public works  
21 project and were found to be nonresponsive, or were found by an  
22 awarding body not to be a responsible bidder.

23 (vii) Any instance where the entity, its owners, officers, or  
24 managing employees defaulted on a construction contract.

25 (viii) Any violations of the Contractors' State License Law  
26 (Chapter 9 (commencing with Section 7000) of Division 3 of the  
27 Business and Professions Code), excluding alleged violations of  
28 federal or state law including the payment of wages, benefits,  
29 apprenticeship requirements, or personal income tax withholding,  
30 or of Federal Insurance Contribution Act (FICA) withholding  
31 requirements settled against any member of the design-build  
32 entity.

33 (ix) Information concerning the bankruptcy or receivership of  
34 any member of the design-build entity, including information  
35 concerning any work completed by a surety.

36 (x) Information concerning all settled adverse claims, disputes,  
37 or lawsuits between the owner of a public works project and any  
38 member of the design-build entity during the five years preceding  
39 submission of a bid pursuant to this section, in which the claim,  
40 settlement, or judgment exceeds fifty thousand dollars (\$50,000).



1 Information shall also be provided concerning any work  
2 completed by a surety during this period.

3 (xi) In the case of a partnership or other association that is not  
4 a legal entity, a copy of the agreement creating the partnership or  
5 association and specifying that all partners or association  
6 members agree to be fully liable for the performance under the  
7 design-build contract.

8 (B) The information required pursuant to this subdivision shall  
9 be verified under oath by the entity and its members in the  
10 manner in which civil pleadings in civil actions are verified.  
11 Information that is not a public record pursuant to the California  
12 Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the  
13 Government Code) shall not be open to public inspection.

14 (4) The city shall establish a procedure for final selection of  
15 the design-build entity. Selection shall be based on either of the  
16 following criteria:

17 (A) A competitive bidding process resulting in lump-sum bids  
18 by the prequalified design-build entities. Awards shall be made  
19 to the lowest responsible bidder.

20 (B) The city may use a design-build competition based upon  
21 best value and other criteria set forth in paragraph (2) of  
22 subdivision (d). The design-build competition shall include the  
23 following elements:

24 (i) Competitive proposals shall be evaluated by using only the  
25 criteria and selection procedures specifically identified in the  
26 request for proposal. However, the following minimum factors  
27 shall each represent at least 10 percent of the total weight of  
28 consideration given to all criteria factors: price, technical design  
29 and construction expertise, life cycle costs over 15 years or more,  
30 skilled labor force availability, and acceptable safety record.

31 (ii) Once the evaluation is complete, the top three responsive  
32 bidders shall be ranked sequentially from the most advantageous  
33 to the least.

34 (iii) The award of the contract shall be made to the responsible  
35 bidder whose proposal is determined, in writing, to be the most  
36 advantageous.

37 (iv) Notwithstanding any provision of this code, upon issuance  
38 of a contract award, the city shall publicly announce its award,  
39 identifying the contractor to whom the award is made, along with  
40 a written decision supporting its contract award and stating the

1 basis of the award. The notice of award shall also include the  
2 city's second and third ranked design-build entities.

3 (v) For the purposes of this paragraph, "skilled labor force  
4 availability" shall be determined by the existence of an  
5 agreement with a registered apprenticeship program, approved by  
6 the California Apprenticeship Council, which has graduated  
7 apprentices in each of the preceding five years. This graduation  
8 requirement shall not apply to programs providing apprenticeship  
9 training for any craft that has been deemed by the Department of  
10 Labor and the Department of Industrial Relations to be an  
11 apprenticeable craft in the five years prior to enactment of this  
12 act.

13 (vi) For the purposes of this paragraph, a bidder's "safety  
14 record" shall be deemed "acceptable" if their experience  
15 modification rate for the most recent three-year period is an  
16 average of 1.00 or less, and their average Total Recordable  
17 Injury/Illness rate and average lost work rate for the most recent  
18 three-year period does not exceed the applicable statistical  
19 standards for its business category, or if the bidder is a party to  
20 an alternative dispute resolution system, as provided for in  
21 Section 3201.5 of the Labor Code.

22 (e) (1) Any design-build entity that is selected to design and  
23 build a project pursuant to this section shall possess or obtain  
24 sufficient bonding to cover the contract amount for nondesign  
25 services and errors and omissions insurance coverage sufficient  
26 to cover all design and architectural services provided in the  
27 contract. This section does not prohibit a general or engineering  
28 contractor from being designated the lead entity on a  
29 design-build entity for the purposes of purchasing necessary  
30 bonding to cover the activities of the design-build entity.

31 (2) Any payment or performance bond written for the  
32 purposes of this section shall be written using a bond form  
33 developed by the city.

34 (f) All subcontractors that were not listed by the design-build  
35 entity in accordance with clause (i) of subparagraph (A) of  
36 paragraph (3) of subdivision (d) shall be awarded by the  
37 design-build entity in accordance with the design-build process  
38 set forth by the city in the design-build package. All  
39 subcontractors bidding on contracts pursuant to this section shall  
40 be afforded the protections contained in Chapter 4 (commencing

1 with Section 4100) of Part 1. The design-build entity shall do  
2 both of the following:

3 (1) Provide public notice of the availability of work to be  
4 subcontracted in accordance with the publication requirements  
5 applicable to the competitive bidding process of the city.

6 (2) Provide a fixed date and time on which the subcontracted  
7 work will be awarded in accordance with the procedure  
8 established pursuant to this section.

9 (g) The minimum performance criteria and design standards  
10 established pursuant to paragraph (1) of subdivision (d) shall be  
11 adhered to by the design-build entity. Any deviations from those  
12 standards may only be allowed by written consent of the city.

13 (h) The city may retain the services of a design professional or  
14 construction project manager, or both, throughout the course of  
15 the project in order to ensure compliance with this section.

16 (i) Contracts awarded pursuant to this section shall be valid  
17 until the project is completed.

18 (j) Nothing in this section is intended to affect, expand, alter,  
19 or limit any rights or remedies otherwise available at law.

20 (k) (1) If the city elects to award a project pursuant to this  
21 section, retention proceeds withheld by the city from the  
22 design-build entity shall not exceed 5 percent if a performance  
23 and payment bond, issued by an admitted surety insurer, is  
24 required in the solicitation of bids.

25 (2) In a contract between the design-build entity and the  
26 subcontractor, and in a contract between a subcontractor and any  
27 subcontractor thereunder, the percentage of the retention  
28 proceeds withheld may not exceed the percentage specified in the  
29 contract between the city and the design-build entity. If the  
30 design-build entity provides written notice to any subcontractor  
31 who is not a member of the design-build entity, prior to or at the  
32 time the bid is requested, that a bond may be required and the  
33 subcontractor subsequently is unable or refuses to furnish a bond  
34 to the design-build entity, then the design-build entity may  
35 withhold retention proceeds in excess of the percentage specified  
36 in the contract between the city and the design-build entity from  
37 any payment made by the design-build entity to the  
38 subcontractor.

39 (l) Each city that elects to proceed under this section and uses  
40 the design-build method on a public works project shall submit to

1 the Legislative Analyst's Office before December 1, 2009, a  
2 report containing a description of each public works project  
3 procured through the design-build process that is completed after  
4 January 1, 2007, and before November 1, 2009. The report shall  
5 include, but shall not be limited to, all of the following  
6 information:

- 7 (1) The type of project.
- 8 (2) The gross square footage of the project.
- 9 (3) The design-build entity that was awarded the project.
- 10 (4) The estimated and actual project costs.
- 11 (5) A description of any written protests concerning any aspect  
12 of the solicitation, bid, proposal, or award of the design-build  
13 project, including the resolution of the protests.
- 14 (6) An assessment of the prequalification process and criteria.
- 15 (7) An assessment of the effect of retaining 5 percent retention  
16 on the project.
- 17 (8) A description of the Labor Force Compliance Program and  
18 an assessment of the project impact, where required.
- 19 (9) A description of the method used to award the contract. If  
20 the best value method was used, the report shall describe the  
21 factors used to evaluate the bid, including the weighting of each  
22 factor and an assessment of the effectiveness of the methodology.
- 23 (10) An assessment of the project impact of "skilled labor  
24 force availability."
- 25 (11) An assessment of the most appropriate uses for the  
26 design-build approach.
- 27 (m) Any city that elects not to use the authority granted by this  
28 section may submit a report to the Legislative Analyst's Office  
29 explaining why the city elected not to use the design-build  
30 method.
- 31 (n) On or before January 1, 2010, the Legislative Analyst's  
32 Office shall report to the Legislature on the use of the  
33 design-build method by cities pursuant to this section, including  
34 the information listed in subdivision (l). The report may include  
35 recommendations for modifying or extending this section.
- 36 (o) This section shall remain in effect only until January 1,  
37 2017, and of that date is repealed, unless a later enacted statute,  
38 that is enacted before January 1, 2017, deletes or extends that  
39 date.

1 SEC. 3. Article 5.5 (commencing with Section 20193) is  
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract  
3 Code, to read:

4  
5 Article 5.5. Special Districts  
6

7 20193. (a) (1) Notwithstanding any other provision of law, a  
8 special district, with approval of its governing body, may utilize  
9 an alternative procedure on bidding on projects in the special  
10 district in excess of two million five hundred thousand dollars  
11 (\$2,500,000).

12 (2) A special district may award a project, pursuant to this  
13 section, using either the lowest responsible bidder or by best  
14 value.

15 (3) For purposes of this article, “special district” means a  
16 special district as defined in subdivision (d) of Section 16271 of  
17 the Government Code.

18 (b) (1) It is the intent of the Legislature to enable special  
19 districts to utilize cost-effective options for building and  
20 modernizing public facilities. It is not the intent of the  
21 Legislature to authorize this procedure ~~in transportation facilities,~~  
22 ~~including~~ for streets, roads, and bridges.

23 (2) The Legislature also finds and declares that utilizing a  
24 design-build contract requires a clear understanding of the roles  
25 and responsibilities of each participant in the design-build  
26 process. The Legislature also finds that the cost-effective benefits  
27 to special districts are achieved by shifting the liability and risk  
28 for cost containment and project completion to the design-build  
29 entity.

30 (3) It is the intent of the Legislature to provide an alternative  
31 and optional procedure for bidding and building construction  
32 projects for special districts.

33 (4) The design-build approach may be used, but is not limited  
34 to use, when it is anticipated that it will: reduce project cost,  
35 expedite project completion, or provide design features not  
36 achievable through the design-bid-build method.

37 (5) If a special district elects to proceed under this section, the  
38 special district shall establish and enforce for design-build  
39 projects a labor compliance program containing the requirements  
40 outlined in Section 1771.5 of the Labor Code, or it shall contract

1 with a third party to operate a labor compliance program  
2 containing the requirements outlined in Section 1771.5 of the  
3 Labor Code. This requirement shall not apply to any project  
4 where the special district or the design-build entity has entered  
5 into any collective bargaining agreement or agreements that bind  
6 all of the contractors performing work on the projects.

7 (c) As used in this section:

8 (1) “Best value” means a value determined by objective  
9 criteria related to price, features, functions, small business  
10 contracting plans, past performance, and life cycle costs.

11 (2) “Design-build” means a procurement process in which  
12 both the design and construction of a project are procured from a  
13 single entity.

14 (3) “Design-build entity” means a partnership, corporation, or  
15 other legal entity that is able to provide appropriately licensed  
16 contracting, architectural, and engineering services as needed  
17 pursuant to a design-build contract.

18 (4) “*Project*” means the construction of public improvements,  
19 except for streets, roads, and bridges.

20 (d) Design-build projects shall progress in a four-step process,  
21 as follows:

22 (1) (A) The special district shall prepare a set of documents  
23 setting forth the scope of the project. The documents may  
24 include, but are not limited to, the size, type, and desired design  
25 character of the project and site, performance specifications  
26 covering the quality of materials, equipment, and workmanship,  
27 preliminary plans or project layouts, or any other information  
28 deemed necessary to describe adequately the special district’s  
29 needs. The performance specifications and any plans shall be  
30 prepared by a design professional who is duly licensed and  
31 registered in California.

32 (B) Any architect or engineer retained by the special district to  
33 assist in the development of the project specific documents shall  
34 not be eligible to participate in the preparation of a bid with any  
35 design-build entity for that project.

36 (2) (A) Based on the documents prepared in paragraph (1), the  
37 special district shall prepare a request for proposals that invites  
38 interested parties to submit competitive sealed proposals in the  
39 manner prescribed by the special district. The request for

1 proposals shall include, but is not limited to, the following  
2 elements:

3 (i) Identification of the basic scope and needs of the project or  
4 contract, the expected cost range, and other information deemed  
5 necessary by the special district to inform interested parties of the  
6 contracting opportunity, to include the methodology that will be  
7 used by the district to evaluate proposals and specifically if the  
8 contract will be awarded to the lowest responsible bidder.

9 (ii) Significant factors which the special district reasonably  
10 expects to consider in evaluating proposals, including cost or  
11 price and all nonprice related factors.

12 (iii) The relative importance of weight assigned to each of the  
13 factors identified in the request for proposals.

14 (B) With respect to clause (iii) of subparagraph (A), if a  
15 nonweighted system is used, the special district shall specifically  
16 disclose whether all evaluation factors other than cost or price  
17 when combined are:

18 (i) Significantly more important than cost or price.

19 (ii) Approximately equal in importance to cost or price.

20 (iii) Significantly less important than cost or price.

21 (C) If the special district chooses to reserve the right to hold  
22 discussions or negotiations with responsive bidders, it shall so  
23 specify in the request for proposal and shall publish separately or  
24 incorporate into the request for proposal applicable rules and  
25 procedures to be observed by the special district to ensure that  
26 any discussions or negotiations are conducted in good faith.

27 (3) (A) The special district shall establish a procedure to  
28 prequalify design-build entities using a standard questionnaire  
29 developed by the special district or a questionnaire developed by  
30 the Department of Industrial Relations. In preparing its own  
31 questionnaire, the special district shall consult with the  
32 construction industry, including representatives of the building  
33 trades and surety industry. This questionnaire shall require  
34 information including, but not limited to, all of the following:

35 (i) If the design-build entity is a partnership, limited  
36 partnership, or other association, a listing of all of the partners,  
37 general partners, or association members known at the time of  
38 bid submission who will participate in the design-build contract,  
39 including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the special district that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction contract.

(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.



1 (ix) Information concerning the bankruptcy or receivership of  
2 any member of the design-build entity, including information  
3 concerning any work completed by a surety.

4 (x) Information concerning all settled adverse claims, disputes,  
5 or lawsuits between the owner of a public works project and any  
6 member of the design-build entity during the five years preceding  
7 submission of a bid pursuant to this section, in which the claim,  
8 settlement, or judgment exceeds fifty thousand dollars (\$50,000).  
9 Information shall also be provided concerning any work  
10 completed by a surety during this period.

11 (xi) In the case of a partnership or other association, that is not  
12 a legal entity, a copy of the agreement creating the partnership or  
13 association and specifying that all partners or association  
14 members agree to be fully liable for the performance under the  
15 design-build contract.

16 (B) The information required pursuant to this subdivision shall  
17 be verified under oath by the entity and its members in the  
18 manner in which civil pleadings in civil actions are verified.  
19 Information that is not a public record pursuant to the California  
20 Public Records Act (Chapter 3.5, Division 7, Title 1 of the  
21 Government Code) shall not be open to public inspection.

22 (4) The special district shall establish a procedure for final  
23 selection of the design-build entity. Selection shall be based on  
24 either of the following criteria:

25 (A) A competitive bidding process resulting in lump-sum bids  
26 by the prequalified design-build entities. Awards shall be made  
27 to the lowest responsible bidder.

28 (B) A special district may use a design-build competition  
29 based upon best value and other criteria set forth in paragraph (2)  
30 of subdivision (d). The design-build competition shall include the  
31 following elements:

32 (i) Competitive proposals shall be evaluated by using only the  
33 criteria and selection procedures specifically identified in the  
34 request for proposal. However, the following minimum factors  
35 shall each represent at least 10 percent of the total weight of  
36 consideration given to all criteria factors; price, technical design  
37 and construction expertise, life cycle costs over 15 years or more,  
38 skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the special district shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the district's second and third ranked design-build entities.

(v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a

1 design-build entity for the purposes of purchasing necessary  
2 bonding to cover the activities of the design-build entity.

3 (2) Any payment or performance bond written for the  
4 purposes of this section shall be written using a bond form  
5 developed by the special district.

6 (f) All subcontractors that were not listed by the design-build  
7 entity in accordance with clause (i) of subparagraph (A) of  
8 paragraph (3) of subdivision (d) shall be awarded by the  
9 design-build entity in accordance with the design-build process  
10 set forth by the special district in the design-build package. All  
11 subcontractors bidding on contracts pursuant to this section shall  
12 be afforded the protections contained in Chapter 4 (commencing  
13 with Section 4100) of Part 1. The design-build entity shall do  
14 both of the following:

15 (1) Provide public notice of the availability of work to be  
16 subcontracted in accordance with the publication requirements  
17 applicable to the competitive bidding process of the special  
18 district.

19 (2) Provide a fixed date and time on which the subcontracted  
20 work will be awarded in accordance with the procedure  
21 established pursuant to this section.

22 (g) The minimum performance criteria and design standards  
23 established pursuant to paragraph (1) of subdivision (d) shall be  
24 adhered to by the design-build entity. Any deviations from those  
25 standards may only be allowed by written consent of the special  
26 district.

27 (h) The special district may retain the services of a design  
28 professional or construction project manager, or both, throughout  
29 the course of the project in order to ensure compliance with this  
30 section.

31 (i) Contracts awarded pursuant to this section shall be valid  
32 until the project is completed.

33 (j) Nothing in this section is intended to affect, expand, alter,  
34 or limit any rights or remedies otherwise available at law.

35 (k) (1) If the special district elects to award a project pursuant  
36 to this section, retention proceeds withheld by the special district  
37 from the design-build entity shall not exceed 5 percent if a  
38 performance and payment bond, issued by an admitted surety  
39 insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the special district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the special district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each special district that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2009, a report containing a description of each public works project procured through the design-build process and completed after January 1, 2007, and before November 1, 2009. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of project.
- (2) The gross square footage of the project.
- (3) The design-build entity that was awarded the project.
- (4) The estimated and actual length of time to complete the project.
- (5) The estimated and actual project costs.
- (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
- (7) An assessment of the prequalification process and criteria.
- (8) An assessment of the effect of retaining ~~5 percent~~ 5 percent retention on the project.
- (9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.
- (10) A description of the method used to award the contract. If best value was the method, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

1 (11) An assessment of the project impact of “skilled labor  
2 force availability.”

3 (12) An assessment of the design-build dollar limits on special  
4 district ~~projects~~.

5 ~~This projects.~~ *This* assessment shall include projects where the  
6 special district wanted to use design-build and was precluded by  
7 the dollar limitation. This assessment shall also include projects  
8 where the best value method was not used due to dollar  
9 limitations.

10 (13) An assessment of the most appropriate uses for the  
11 design-build approach.

12 (m) Any special district that elects not to use the authority  
13 granted by this section may submit a report to the Legislative  
14 Analyst’s Office explaining why the special district elected to not  
15 use the design-build method.

16 (n) On or before January 1, 2010, the Legislative Analyst shall  
17 report to the Legislature on the use of the design-build method by  
18 special districts pursuant to this section, including the  
19 information listed in subdivision (l). The report may include  
20 recommendations for modifying or extending this section.

21 (o) This section shall remain in effect only until January 1,  
22 2017, and as of that date is repealed, unless a later enacted  
23 statute, that is enacted before January 1, 2017, deletes or extends  
24 that date.

25 SEC. 4. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the  
30 penalty for a crime or infraction, within the meaning of Section  
31 17556 of the Government Code, or changes the definition of a  
32 crime within the meaning of Section 6 of Article XIII B of the  
33 California Constitution.

AMENDED IN SENATE MAY 2, 2006  
AMENDED IN SENATE APRIL 18, 2006  
AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1812**

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**Introduced by Senator Runner**

February 24, 2006

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An act to add and repeal Section 820.1 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1812, as amended, Runner. Department of Transportation: surface transportation project delivery pilot program.

Existing law gives the Department of Transportation full possession and control of state highways and associated property. Existing federal law requires the United States Secretary of Transportation to carry out a surface transportation project delivery pilot program, as specified. The secretary is authorized to permit up to 5 states, including California, to participate in the program and California has agreed to that participation.

This bill would, until January 1, 2009, ~~authorize the Director of Transportation to consent~~ *provide that the State of California consents* to the jurisdiction of the *state and* federal courts with regard to the compliance, discharge, or enforcement of the responsibilities assumed pursuant to the surface transportation project delivery pilot program, and would make related provisions. The bill would require the department to submit a specified report to the Legislature by January 1, 2008, relating to the surface transportation project delivery pilot program.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 820.1 is added to the Streets and  
2 Highways Code, to read:  
3 820.1. (a) ~~The director is authorized to consent to the~~  
4 ~~jurisdiction of the State of California consents to the jurisdiction~~  
5 ~~of the state and~~ federal courts with regard to the compliance,  
6 discharge, or enforcement of the responsibilities assumed by the  
7 department pursuant to Section 326 of, and subsection (a) of  
8 Section 327 of, Title 23 of the United States Code.  
9 ~~(b) Consent to the jurisdiction of the federal courts pursuant to~~  
10 ~~subdivision (a) shall constitute a waiver of the state's Eleventh~~  
11 ~~Amendment protection against lawsuits brought in federal court.~~  
12 (b) *In any action brought pursuant to the federal laws*  
13 *described in subdivision (a), no immunity from suit may be*  
14 *asserted by the department pursuant to the Eleventh Amendment*  
15 *to the United States Constitution, and any immunity is hereby*  
16 *waived.*  
17 (c) *The department shall not delegate any of its*  
18 *responsibilities assumed pursuant to the federal laws describe in*  
19 *subdivision (a) to any political subdivision of the state or its*  
20 *instrumentalities.*  
21 (e)  
22 (d) The department shall, no later than January 1, 2008, submit  
23 a report to the Legislature that includes the following:  
24 (1) A comparative analysis of the environmental review  
25 process under the National Environmental Policy Act for the 30  
26 projects, excluding those projects categorically excluded from  
27 environmental review, undertaken immediately preceding the  
28 enactment of this section that involved the Federal Highway  
29 Administration and the environmental review process for all  
30 projects undertaken following the enactment of this section that  
31 did not involve the Federal Highway Administration. This  
32 analysis should address the following:  
33 (A) For each project included in the analysis, the  
34 environmental review process under the National Environmental  
35 Policy Act, including which state and federal agencies reviewed

1 the environmental documents and the amount of time the  
2 documents were reviewed by each agency, shall be described.

3 (B) The points in the environmental review process under the  
4 National Environmental Policy Act when project delays occurred  
5 and the nature of the delays.

6 (C) The time saved in the environmental review process for  
7 projects undertaken following the enactment of this section in  
8 comparison to the review process for projects undertaken prior to  
9 the enactment of this section. The points in the review process  
10 when time was saved.

11 (D) The circumstances when the Federal Highway  
12 Administration hindered and facilitated project delivery.

13 (2) All financial costs incurred by the department to assume  
14 the responsibilities pursuant to Section 326 of, and subsection (a)  
15 of Section 327 of, Title 23 of the United States Code, including,  
16 but not limited to the following:

17 (A) Personnel to conduct and review environmental  
18 documents and to manage litigation.

19 (B) Administrative costs.

20 (C) Litigation.

21 (3) An explanation of all litigation initiated against the  
22 department for the responsibilities assumed pursuant to Section  
23 326 of, and subsection (a) of Section 327 of, Title 23 of the  
24 United States Code.

25 (4) A comparison of all costs and benefits of assuming these  
26 responsibilities.

27 ~~(d)~~

28 (e) This section shall remain in effect only until January 1,  
29 2009, and as of that date is repealed, unless a later enacted  
30 statute, that is enacted before January 1, 2009, deletes or extends  
31 that date. ~~However, any waiver pursuant to subdivision (b) shall~~  
32 ~~remain in effect for any responsibility carried out by the state~~  
33 ~~prior to the repeal of this section under this subdivision. The state~~  
34 ~~shall remain liable for any decisions made or responsibilities~~  
35 ~~assumed and exercised, prior to the repeal of this section under~~  
36 ~~this subdivision, pursuant to applicable federal statutes of~~  
37 ~~limitation for filing citizens' suits in federal court.~~